

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matter of	)	
	)	IB Docket No. _____
Philippines Long Distance Telephone Company	)	
Globe Telecom, Inc.	)	
	)	
AT&T Emergency Petition for Settlements	)	
Stop Payment Order and Request for	)	
Immediate Interim Relief	)	

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**AT&T EMERGENCY PETITION  
FOR SETTLEMENTS STOP PAYMENT ORDER AND  
REQUEST FOR IMMEDIATE INTERIM RELIEF.**

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Mark C. Rosenblum  
Lawrence J. Lafaro  
James J. R. Talbot

One AT&T Way  
Bedminster, New Jersey 07921  
(908) 532-1847

Dated: February 7, 2003.

## **SUMMARY**

By this emergency petition, AT&T Corp. ("AT&T") requests immediate enforcement of the Commission's longstanding prohibition on whipsawing to prevent foreign carriers in the Philippines, led by the Philippines Long Distance Telephone Company ("PLDT"), the dominant carrier in the Philippines, from blocking AT&T U.S.-Philippines traffic in support of a unilateral and unjustified 50 percent rate increase. PLDT and Globe Telecom, Inc. ("Globe"), a wireline and wireless carrier in the Philippines, have disrupted AT&T's circuits to the Philippines since February 1, 2003, while Digitel Telecommunications Philippines, Inc. ("Digitel"), Bayan Telecommunications Company ("Bayantel"), Smart Communications, Inc. ("Smart") and Subic Telecom ("Subic"), are also now doing so.

The Commission immediately should order all U.S. carriers to stop all settlements payments to these carriers until all circuits are restored, as it has responded to similar foreign carrier whipsaw conduct in the past. AT&T also asks the Commission to issue an immediate stop payment order as interim relief, pending final action following any period of notice and comment that is applied here.

These blatant whipsaws are in retaliation for AT&T's refusal to pay the 50 percent increase in termination rates demanded by all these carriers. They are also the result of concerted conduct. Remarkably, a January 29, 2003 SEC filing by one of these carriers, Globe, admits that these increases are the subject of signed agreements among the Philippine carriers.

Because of these circuit blockages, only a small proportion of AT&T's customers' calls are getting through to called parties in the Philippines, which is one of the very largest U.S. international routes. AT&T expects that these actions by the Philippine carriers will likely continue to disrupt most calls to the Philippines by AT&T's customers until those carriers

restore AT&T's circuits.

The Commission should take urgent action to prevent further harm to AT&T's customers and the public interest from this unjustified disruption of communications circuits, which is in violation of longstanding Commission policies protecting U.S. consumers from such foreign abuse, and in direct defiance of an order by the regulator in the Philippines to maintain circuits with U.S. carriers. The Commission immediately should respond to this blatant whipsaw in the same way it has previously responded to such foreign carrier misconduct: by prohibiting all U.S. carriers from making any payments to these foreign carriers until all circuits are restored.

The Commission also should ensure that PLDT's U.S. affiliate, PLDT (US) Ltd., does not use the rate increase to engage in pricing policies that harm U.S. competition or otherwise take unfair advantage of its affiliation with PLDT.

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FOR SETTLEMENTS STOP PAYMENT ORDER AND  
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AT&T Corp. ("AT&T") hereby submits this Emergency Petition to request immediate issuance of an order requiring U.S. carriers to stop settlements payments to the Philippines Long Distance Telephone Company ("PLDT"), and other foreign carriers in the Philippines, which are blocking AT&T traffic to the Philippines in support of an attempted 50 percent increase in termination rates. PLDT's on-going circuit blockage, and the similar blockage by Globe Telecom, Inc. ("Globe"), a wireline and wireless carrier, has continued since February 1, 2003, while other Philippine carriers, Digitel Telecommunications Philippines, Inc. ("Digitel"), Bayan Telecommunications Company ("Bayantel"), Smart Communications, Inc. ("Smart") and Subic Telecom ("Subic"), are also now blocking AT&T circuits.

These actions blatantly violate the Commission's longstanding prohibition on whipsawing, and require immediate Commission intervention. The Commission should respond to this conduct as it has done in the past and order all U.S. carriers to stop settlements payments to these foreign carriers until all circuits are restored. The Commission also should issue an

immediate stop payment order as interim relief to prevent further harm to the public interest from this foreign carrier retaliation, pending final action on this request following any period of notice and comment that is applied.

The Commission also should ensure that PLDT's U.S. affiliate, PLDT (US) Ltd. ("PLDT US"), which is subject to the Commission's dominant carrier rules, does not use the rate increase to engage in pricing policies that harm U.S. competition or otherwise take unfair advantage of its affiliation with PLDT.

**I. PHILIPPINES CARRIERS SEEK TO ENFORCE AN UNJUSTIFIED 50 PERCENT INCREASE IN TERMINATION RATES.**

Philippines carriers received \$190 million from U.S. carriers in 2001, the third largest U.S. settlements outpayment to any country. *See* Declaration of Mark Miller ("Miller Decl."), ¶ 3. The U.S.-Philippines route is the fourth largest U.S. international route by volume, with 1.7 billion U.S.-outbound minutes in 2001. *Id.* Traffic volumes from the U.S. to the Philippines have more than doubled in the last two years, making this one of the fastest growing U.S.-international routes. *Id.*

PLDT is the former monopoly provider in the Philippines and remains the dominant local exchange carrier with almost 70 percent of local lines. *Id.* at ¶ 4.<sup>1</sup> Thus, approximately 70-75 percent of AT&T's traffic to wireline numbers in the Philippines terminates on local access lines controlled by PLDT. *Id.* AT&T's U.S.-outbound traffic to PLDT is subject

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<sup>1</sup> *See also*, List of Telecommunications Carriers that are Presumed to Possess Market Power in Foreign Telecommunications Markets (listing PLDT as the dominant carrier in the Philippines).

[http://www.fcc.gov/Bureaus/International/Public Notices/1999/da990809.txt](http://www.fcc.gov/Bureaus/International/Public%20Notices/1999/da990809.txt).

to a bilaterally negotiated rate of 8 cents per minute, while PLDT's U.S.-inbound traffic to AT&T is subject to a lower bilaterally negotiated rate. *Id.* at ¶ 5.

AT&T also has arrangements with several of PLDT's competitors. *Id.* at ¶ 6. These carriers are: Digitel and Bayantel, the second and third largest wireline local exchange carriers in the Philippines, which have approximately 12 percent and 8 percent of local lines, respectively; Smart, the largest mobile carrier in the Philippines; Globe, which is both the second largest mobile carrier and the third largest wireline local exchange carrier, with almost 8 percent of local lines; and Subic, which is also a wireline local exchange carrier. *Id.* Smart and Subic are affiliates of PLDT. *Id.*

AT&T's U.S.-outbound traffic to Digitel, Bayantel, and Globe is subject to similar bilaterally negotiated rates as those paid to PLDT, with U.S.-inbound traffic from these carriers to AT&T also being subject to lower rates. *Id.* at ¶ 7. AT&T's U.S.-outbound traffic terminating on mobile networks in the Philippines, including traffic terminated with Smart and Globe, is subject to a higher rate of approximately 12 cents per minute. *Id.*

Since November 2002, PLDT has attempted to increase AT&T's U.S.-outbound rate to the Philippines by 50 percent to 12 cents per minute for 2003. *Id.* at ¶ 8. PLDT has not shown that this requested rate increase is required by increased termination costs, and has rather asserted that it is being undertaken to "align" fixed and mobile termination rates. *Id.* at ¶ 9.<sup>2</sup> AT&T has refused to agree to this requested increase, which PLDT has sought to make effective

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<sup>2</sup> However, even this purported justification is belied by PLDT's further demand to increase AT&T's rates for U.S.-Philippines traffic terminated on mobile networks -- similar to the demands for increased rates by the mobile carriers Smart and Globe -- which would maintain similar margins to those that presently exist between rates for termination on fixed and mobile networks in the Philippines. *See* Miller Decl. at ¶¶ 8-9.

on February 1, 2003. *Id.* at ¶ 8. The other Philippine carriers have demanded the exact same rate increase effective on the same date, and Smart and Globe have also demanded an increased rate for termination on mobile networks of 16 cents. *Id.* AT&T has refused all these requests as being unjustified. *Id.*

A U.S. Securities and Exchange Commission filing by Globe on January 29, 2003 states that Globe signed agreements in January 2003 with PLDT, Smart, Bayantel, and Digitel “to amend their existing interconnection agreements” to provide, among other things, that:

“(c) Effective 01 February 2003, calls passing through an IGF terminating to an LEC network will be charged a termination rate of US\$0.12 per minute, an increase from the previous termination rate of US\$0.08 per minute.

“(d) Effective 01 February 2003, calls passing through an IGF terminating to a CMTS network will be charged a termination rate of US\$0.16 per minute, an increase from the previous termination rate of US\$0.12 per minute.”<sup>3</sup>

In late January 2003, PLDT threatened to block AT&T’s traffic to the Philippines because of AT&T’s refusal to pay its requested increase. Miller Decl. at ¶ 10. PLDT informed AT&T, by letter dated January 30, 2003, that “[s]ince AT&T disagrees (while other carriers agreed) on the proposed rates, PLDT is constrained to discontinue accepting AT&T’s traffic.” *Id.* AT&T also received similar notifications from Globe and Bayantel that AT&T’s traffic would not be terminated unless AT&T paid the increased rates they were requesting. *Id.*

By letter dated January 31, 2003, International Bureau Chief Donald Abelson asked the chief Philippines telecommunications regulator, Commissioner Armi Jane Borje for “cooperation in ensuring that circuits on the U.S.-Philippines route remain active” and

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<sup>3</sup> Globe Telecom, Inc., U.S. Securities and Exchange Commission Form 6-K, SEC Number 1177, filed Jan. 29, 2003, at 18 (Attachment 1 hereto).

emphasized “the interest of consumers and the economies of both our countries to avoid disruptions to our communications networks.” *Id.* at ¶ 11. Mr. Abelson also warned that the Commission has previously deemed such disruptions during rate negotiations as whipsawing and has prohibited payments from U.S. carriers until the disruptions are resolved. *Id.*

The same day, the Philippine regulatory body, the National Telecommunications Commission (“NTC”), issued a Memorandum Order addressed to PLDT, Globe, and Bayantel, but applicable to all “similarly situated” Philippine carriers, specifically directing them “to maintain the status quo of the existing circuits and termination rates” with U.S. carriers. *Id.* at ¶ 12. The NTC order stated that “[d]isruption of service especially at this volatile time is definitely prejudicial to public interest and national welfare.” The order further stated that the threatened disruption of U.S. carrier circuits was “due to your decision to increase termination rates.” *Id.*

PLDT ignored that order and began blocking AT&T circuits on February 1, 2003, the very next day. *Id.* at ¶ 13. Other Philippine carriers assisted PLDT by refusing to accept any AT&T traffic destined for PLDT’s access lines. *Id.* Globe also began blocking AT&T circuits on February 1, 2003, and Subic, Digitel, Bayantel, and Smart are also now blocking AT&T’s circuits. *Id.* Currently, PLDT and Globe are blocking all or virtually all traffic sent by AT&T, while Smart, Bayantel and Subic are blocking the large majority of traffic sent by AT&T, and Digitel is blocking about a third of AT&T’s traffic. *Id.*

AT&T is also using other alternative routing arrangements but, overall, is still unable to terminate more than a small proportion of its customers’ calls to the Philippines. *Id.* Consequently, the Philippine carrier actions are disrupting, and will likely continue to disrupt, most calls to the Philippines by AT&T’s customers until AT&T’s circuits are restored. *Id.*



## II. THESE PHILIPPINE CARRIER ACTIONS VIOLATE LONGSTANDING COMMISSION ANTI-WHIPSAB POLICIES.

The Commission has long prohibited foreign carriers from abusing their control of bottleneck facilities at the foreign end of U.S. international routes to “whipsaw” competitive U.S. carriers. As the Commission explained two decades ago, “‘Whipsaw’ is the term used to describe the ability of the foreign correspondent to utilize its monopoly power to play one carrier against others to gain concessions and benefits from the U.S. international carriers.”<sup>4</sup>

The Courts have consistently upheld Commission action to prevent such abuse of foreign market power, because they have agreed that “to rely upon companies which are bitter competitors not to make concessions to the [foreign] administration which controls all outgoing radiotelegraph traffic is to provide an exceedingly tenuous basis upon which to rest public interest.”<sup>5</sup> In recent years, the D.C. Circuit has upheld Commission action against whipsawing,<sup>6</sup> and also has upheld Commission regulation of rates paid to foreign carriers as being necessary, among other reasons, to prevent whipsawing of U.S. carriers.<sup>7</sup>

When another foreign carrier, Telintar of Argentina, blocked AT&T circuits in 1996 in an effort to maintain high rates, the Bureau made clear that the “unilateral[] block[ing]” of U.S. carrier circuits in retaliation for U.S. carrier efforts to reduce rates “constitutes classic

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<sup>4</sup> *Uniform Settlement Rates on Parallel International Communications Routes*, 84 FCC 2d 121, n.3 (1980).

<sup>5</sup> *Mackay Radio & Telegraph Co.*, 2 FCC 592 (1936), *aff’d by the Commission en banc*, 4 FCC 150 (1937), *aff’d sub nom Mackay Radio & Telegraph Co. v. FCC*, 97 F. 2d 641 (D.C. Cir. 1938).

<sup>6</sup> *Atlantic Tele-Network, Inc. v. FCC*, 59 F. 3d 1384, 1389 (D.C. Cir. 1995).

<sup>7</sup> *Cable & Wireless P.L.C. v. FCC*, 166 F.3d 1224, 1230 (D.C. Cir. 1999).

whipsawing and violates our International Settlements Policy (ISP).”<sup>8</sup> The Bureau accordingly ordered U.S. carriers “to suspend settlements payments to Telintar” until all international circuits were “fully restored.”<sup>9</sup>

The Bureau explained: “This Commission will not allow foreign monopolists to undermine U.S. law, injure U.S. carriers or disadvantage U.S. consumers.”<sup>10</sup> The Bureau further stated: “We must use our regulatory authority to prevent this effort from being successful.”<sup>11</sup> In upholding this Bureau order, the Commission emphasized that such “retaliatory actions in response to AT&T’s efforts to negotiate a more cost-based settlement rate constituted classic whipsawing, which the Bureau is clearly authorized to remedy under the ISP.”<sup>12</sup>

As described below, PLDT and the other Philippines carriers similarly are now engaged in a classic whipsaw that the Bureau is fully authorized to address.<sup>13</sup>

# **1. The Philippine Carriers Are Engaged in Whipsaw Conduct.**

PLDT’s letter dated January 30, 2003 threatened “to discontinue accepting AT&T’s traffic” if AT&T did not agree to the increase, and highlighted the fact that, while “AT&T disagrees” with the requested rate increase, “other carriers agreed” with “the proposed

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<sup>8</sup> *AT&T Corp., Proposed Extension of Accounting Rate Agreement for Switched Voice Service with Argentina*, 11 FCC Rcd. 18,014, ¶ 2 (1996).

<sup>9</sup> *Id.* at ¶ 2.

<sup>10</sup> *Id.* at ¶ 1.

<sup>11</sup> *Id.*

<sup>12</sup> *AT&T Corp., Proposed Extension of Accounting Rate Agreement for Switched Voice Service with Argentina*, 14 FCC Rcd. 8306, ¶13 (1999). *See also, id.* (noting that “the Commission’s authority to enforce the ISP is found in Section 201”).

rates.” Miller Aff. at ¶ 10 & Att. A thereto. PLDT’s letter makes clear that, like the “classic whipsaw” conducted by Telintar in retaliation for AT&T’s efforts to reduce rates, PLDT’s disruption of AT&T’s circuits is in retaliation for AT&T’s refusal to pay the requested increase.<sup>14</sup> PLDT’s U.S. affiliate apparently seeks to increase this whipsaw pressure, by notifying U.S. carriers that have agreed to pay the increased rate that PLDT is refusing to accept traffic from U.S. carriers that have not agreed to the increase, and by offering additional circuits and discounted rates. A facsimile message dated January 31, 2003 from the marketing director of PLDT US states that “PLDT may have to discontinue traffic from other carriers,” that “traffic via your route may increase abruptly,” and that “[w]e assure you of PLDT’s cooperation should there be an immediate need to increase additional circuits.” Miller Decl. at ¶ 14 & Att. B thereto. (Emphasis in original.) PLDT US also offers a volume discount “should your monthly traffic volume reach 5 million minutes.” *Id.*

There is plainly no difference between retaliatory action against an attempt to negotiate a lower rate, as was undertaken by Telintar, and retaliatory action against a refusal to accept a rate increase, as PLDT and the other Philippines carriers undertake here. Both actions seek to prevent the reduction of rates to cost, and thus run directly counter to Commission policy. The Commission has long sought to encourage “lower, more economically efficient, cost-based” rates through the ISP, and therefore emphasized, in the same order, that non-cost-

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(footnote continued from previous page)

<sup>13</sup> See 47 C.F.R. Sect. 0.51(c), (d), (r).

<sup>14</sup> *Id.* at ¶ 4.

based rate increases should be denied.<sup>15</sup>

## **2. Commission Anti-Whipsaw Policies Are Fully Applicable to All These Foreign Carriers.**

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The Commission's longstanding prohibition on whipsaw conduct by foreign carriers is unaffected by the authorization of U.S. carrier arrangements with PLDT for ISR.<sup>16</sup> This is clear for at least four reasons. First, although ISR traffic is "not subject to the ISP's requirements of nondiscriminatory accounting rates, equal division of accounting rates, or proportionate return of inbound traffic,"<sup>17</sup> ISR traffic is not exempt from the ISP prohibition on whipsawing. The Commission has never found that its anti-whipsaw policies do not apply to ISR traffic, and any such determination would undermine the very purpose of ISR, which is to "promote the public interest in increased competition and reduced prices" and to "put pressure on above-cost accounting rates."<sup>18</sup> Thus, while U.S. carriers using ISR arrangements may avoid the specific ISP requirements for nondiscriminatory accounting rates, equal division of accounting rates, and proportionate return of inbound traffic, they do not lose the protection of the Commission's anti-whipsaw policies.

Second, the Commission made clear that a specific concern on ISR routes is "any practice by which a foreign carrier terminates U.S.-inbound traffic at low rates and exercises market power to require that U.S. carriers pay much higher rates to terminate traffic in the

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<sup>15</sup> *Regulation of International Accounting Rates*, 6 FCC Rcd. 3552, ¶¶ 1-3, 16 & n. 30 (1991).

<sup>16</sup> See Public Notice DA 00-2356, Oct. 19, 2000.

<sup>17</sup> *ISP Reform Order*, 14 FCC Rcd. 7963, ¶13 (1999).

<sup>18</sup> *Id.*

foreign market,”<sup>19</sup> which is the situation here.<sup>20</sup> Where this conduct involves the exercise of foreign market power to play one U.S. carrier against others to gain concessions and benefits, it is properly described by the Commission as whipsawing.<sup>21</sup> This conclusion is especially warranted where, as here, this whipsawing of U.S. carriers is accomplished through circuit disruptions.

Third, the Commission has repeatedly reaffirmed that its policy is to encourage the reduction of rates to cost-based levels,<sup>22</sup> and continued exercise of Commission authority is necessary to further this objective when U.S. carriers cannot overcome foreign-end whipsaw behavior, irrespective of the type of traffic arrangement.

Fourth, the ISP is still applicable to PLDT on the U.S.-Philippines route, because this route does not appear on the Commission’s list of routes from which the ISP has been

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<sup>19</sup> *Id.* at ¶ 14.

<sup>20</sup> As noted above, PLDT terminates its U.S.-bound traffic with AT&T at lower rates than the 8 cents paid by AT&T. Miller Decl. at ¶ 5.

<sup>21</sup> *International Settlements Policy Reform*, IB Docket No. 02-324, Notice of Proposed Rulemaking, rel. Oct. 11, 2002, ¶ 2 (“‘Whipsawing’ generally involves instances where a foreign carrier has the ability through pressure on multiple U.S. carriers to extract higher termination rates from a U.S. carrier than the foreign carrier is required to pay to terminate traffic on the U.S. end.”)

<sup>22</sup> *See, e.g., Sprint Communications Company*, 13 FCC Rcd. 24,998, 24,999 (1998) (rejecting lower rates for providing insufficient reductions toward cost, and emphasizing that the Commission’s goal is “settlement rates that reflect incremental cost”); *AT&T Corp., Petition for Waiver of the International Settlements Policy to Change the Accounting Rate Arrangement for Switched Voice Service with Japan*, 12 FCC Rcd. 18,287, ¶ 8 (1997) (“The Commission’s longstanding goal for international settlement rates is cost-based rates because these rates promote economic efficiency and are the rates that would exist in a competitive market situation.”); *International Settlement Rates*, 12 FCC Rcd. 19,806, ¶ 101, n.176 (1997) (“*Benchmarks Order*”)(“We reiterate that our goal is ultimately to achieve settlement rates that are cost-based.”)

removed.<sup>23</sup>

Lastly, the fact that the other Philippine carriers that are whipsawing AT&T do not appear on the Commission's list of foreign dominant carriers does not exempt U.S. carrier arrangements with these carriers from appropriate remedial action against whipsawing. The Commission specifically recognized in the *ISP Reform Order* that "a foreign carrier that otherwise would appear to lack market power might possess some ability unilaterally to set rates for terminating U.S. traffic due to government policies or collusive behavior in the foreign market."<sup>24</sup> The Commission made clear that "appropriate remedial action" may be necessary in such circumstances.<sup>25</sup>

That is certainly the situation where these carriers have undertaken similar circuit disruption as PLDT, at the same time as PLDT, in support of efforts to obtain the very same rate increase. Indeed, Globe's SEC filing admits that the Philippine carriers have signed agreements among themselves to charge these higher rates. Nor is this concerted conduct by the Philippine carriers pursuant to any regulatory requirement in the Philippines, as demonstrated by the statement in the January 31, 2003 NTC order addressed to PLDT, Globe and Bayantel that the cause of the threatened circuit disruption was "*your decision to increase termination rates.*" Miller Decl. at ¶ 12 (emphasis added). Accordingly, the other Philippine carriers should be treated no differently here than PLDT.

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<sup>23</sup> See [http://www.fcc.gov/ib/pd/pf/isp\\_exempt.html](http://www.fcc.gov/ib/pd/pf/isp_exempt.html) (Commission's list of international routes that satisfy criteria for relief from the International Settlements Policy and associated filing requirements, Nov. 26, 2002.)

<sup>24</sup> *ISP Reform Order*, 14 FCC Rcd. 7963, ¶ 30 (1999).

<sup>25</sup> *Id.*

**III. U.S. CARRIER PAYMENTS SHOULD BE PROHIBITED UNTIL ALL CIRCUITS ARE RESTORED.**

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This naked abuse of market power by PLDT and the other Philippine carriers should receive the same response as prior foreign dominant carrier whipsaw conduct by Telintar: the Commission immediately should prohibit all U.S. carriers from making any settlements payments to PLDT until all circuits are restored. This action is urgently necessary to further the public interest in lower, more cost-based rates on this route in the face of this whipsaw, fully supported by Commission precedent, and well within the scope of Bureau and Commission authority.

The Bureau has attempted to resolve matters without resort to such a remedy by notifying the Philippine regulator of the situation, by letter dated January 31, 2003 from International Bureau Chief Donald Abelson, which requested “cooperation in ensuring that circuits on the U.S.-Philippines route remain active.” Mr. Abelson also warned that the Commission has previously deemed such disruptions during rate negotiations as whipsawing and has prohibited payments from U.S. carriers until the disruptions are resolved.

Thus, reasonable steps have been taken in an attempt to avoid ordering U.S. carriers to stop payments. These efforts immediately led to an order by the Philippine regulator that Philippine carriers should maintain circuits and existing rates and should engage in further negotiations with U.S. carriers. Unfortunately, the Philippine carriers have chosen to ignore that order. The Commission accordingly should now impose immediately the remedy described by Mr. Abelson by letter to the Philippine regulator as being necessary to “protect U.S. consumers and competition,” which would also provide further support for the position taken by the Philippine regulator.

Mr. Abelson’s letter dated January 31 properly emphasized the great potential

harm to “consumers and the economies of both our countries” that may result from communications network disruptions. The order issued by the Philippine regulator issued that same day further underscored that “Disruption of service, especially at this volatile time is definitely prejudicial to public interest and national welfare.” The whipsaw by the Philippine carriers thus disregards the adverse potential economic impact of this service disruption, the interests of consumers in both countries, and their own regulator.

The Commission accordingly should prohibit any U.S. carrier from making payments to the Philippine carriers until all circuits are restored.

#### **IV. THE COMMISSION ALSO SHOULD IMPOSE IMMEDIATE INTERIM RELIEF TO PROTECT THE PUBLIC INTEREST.**

Additionally, the Commission should issue an immediate stop payment order to provide interim relief, pending any final action on this petition following any period of notice and comment that is applied here.<sup>26</sup> The need for the expeditious grant of interim relief is clear. As described above, because of the circuit blockage, AT&T cannot terminate more than a small proportion of calls to the Philippines, and expects that most of its customers’ calls to these carriers’ networks will continue to fail to go through until circuits are restored.

Meanwhile, U.S. carriers that have agreed to pay these rate increases are able to terminate all their traffic to the Philippines. As noted above, PLDT’s January 30 letter to AT&T threatening to “discontinue receiving AT&T’s traffic” highlighted the fact that “other carriers

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<sup>26</sup> Any such notice and comment period should be brief. Pursuant to Rule 1.3, the Commission may waive any rule for good cause, and AT&T submits that ample cause has been shown here for a very short notice and comment period. *E.g., AT&T Corp v. Ameritech*, 13 FCC Rcd. 14508, 14511 (1998) (describing expedited procedures under which oppositions were filed within seven days and replies were filed two days later).



agreed” on the rates that AT&T had refused to pay. U.S. carriers that have agreed to pay PLDT’s rate increase apparently also are being encouraged by PLDT’s U.S. affiliate to expect additional traffic volumes and to increase circuits with PLDT. *See* Miller Decl. at ¶ 14 & Att. B thereto.<sup>27</sup>

The circumstances here fully satisfy the *Virginia Petroleum Jobbers Ass’n v. FPC* criteria under which the Commission evaluates requests for interim relief.<sup>28</sup> These criteria are: (1) a likelihood of success on the merits; (2) the threat of irreparable harm absent the grant of preliminary relief; (3) the degree of injury to other parties if relief is granted; and (4) that the issuance of the order will further the public interest.<sup>29</sup> The Commission has also emphasized that “there is no requirement that there be a showing as to each single factor.”<sup>30</sup> Thus, “[i]f there is a particularly overwhelming showing in at least one of the factors,” the Commission may grant interim relief “notwithstanding the absence of another one of the factors.”<sup>31</sup>

As shown above, there is a very strong likelihood of success on the merits, because the challenged conduct is indisputably whipsawing in violation of longstanding

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<sup>27</sup> These U.S. carriers also will be able to take advantage of any lower rates that become available if the whipsaw is unsuccessful.

<sup>28</sup> 259 F. 2d 921, 925 (D.C. Cir. 1958). *See also, e.g., Amendment of Parts 0, 1, 13, 22, 24, 26, 27, 80, 87, 90, 95, 97, and 101 of the Commission’s Rules to facilitate the Development and Use of the Universal Licensing System in the Wireless Telecommunications Services*, 14 FCC Rcd. 9305 (1999).

<sup>29</sup> *Virginia Petroleum Jobbers Ass’n*, 259 F. 2d at 925.

<sup>30</sup> *See Amendment of Parts 0, 1, 13, 22, 24, 26, 27, 80, 87, 90, 95, 97, and 101 of the Commission’s Rules to facilitate the Development and Use of the Universal Licensing System in the Wireless Telecommunications Services*, 14 FCC Rcd. 9305, ¶ 4.

<sup>31</sup> *Id.*

Commission policies that support imposition of a stop payment order. Thus, this factor alone is sufficient to justify the grant of interim relief in this matter.

However, the other three *Virginia Petroleum Jobbers Ass'n* factors are also clearly fulfilled. As described above, the immediate imposition of a stop payment order is necessary to prevent immediate harm to AT&T and its customers from this continuing whipsaw, and to protect the public interest in both the United States and the Philippines, as evidenced by the order issued by the Philippines regulator. Indeed, the Commission has previously found that the loss of customers to a competitor -- which is the likely result here, if AT&T's circuits remain blocked, while other U.S. carriers are able to complete customer calls to the Philippines -- constitutes irreparable harm supporting the grant of interim relief under the *Virginia Petroleum Jobbers Ass'n* criteria.<sup>32</sup>

Further, grant of this requested interim relief would merely affect the Philippines carriers that are the perpetrators of the challenged conduct, which would not receive settlements payments from U.S. carriers pending final action by the Commission.

#### **V. THE COMMISSION SHOULD PREVENT ANTICOMPETITIVE CONDUCT BY PLDT US.**

PLDT's U.S. affiliate, PLDT US, is apparently assisting PLDT's whipsaw by offering additional circuits and discounted rates to U.S. carriers that have agreed to pay PLDT's increased rate. PLDT US accounted for approximately 10 percent of U.S.-outbound traffic to the Philippines in 2001, according to Section 43.61 data,<sup>33</sup> and is regulated as a dominant carrier on

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<sup>32</sup> *AT&T Corp v. Ameritech*, 13 FCC Rcd. at 14521 ("it is possible that customers who have migrated to [other U.S. carriers] . . . will never return to their previous carriers.")

<sup>33</sup> PLDT US is therefore required to file quarterly traffic reports on this route pursuant to

the U.S.-Philippines route.<sup>34</sup> The Commission should ensure that PLDT US also does not use the rate increase to engage in pricing policies that harm U.S. competition, or otherwise take unfair advantage of its affiliation with PLDT.

Any preferred treatment by PLDT of PLDT US regarding facility arrangements would be a special concession in violation of Section 63.14. Thus, if PLDT maintains facilities with PLDT US, when PLDT has disrupted circuits with U.S. carriers that have refused to pay the requested increase, the Commission should verify that PLDT US is in fact paying the increased termination rate (or, if it is unable to pay the rate pursuant to a stop payment order issued by the Commission, that it remains liable for that rate).<sup>35</sup> Similarly, the Commission should verify that the increased rate is fully reflected in PLDT US's prices.<sup>36</sup>

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(footnote continued from previous page)

Section 43.61 (1)(iii).

<sup>34</sup> PLDT US is therefore also required to file quarterly Section 63.10(c) reports with the Commission.

<sup>35</sup> These payments should be reflected in the separate books of account that PLDT US is required to maintain under Section 63.10 (c)(2)(i).

<sup>36</sup> *See Benchmarks Order*, 12 FCC Rcd. 19,806, ¶ 224 (establishing rebuttable presumption of price squeeze behavior if collection rates are less than average variable costs, which comprise the carrier's net settlement rate plus originating access charges).

**CONCLUSION**

For the above-described reasons, the Commission should prohibit all U.S. carriers from making settlements payments to PLDT, Digitel Bayantel, Globe, Smart and Subic until all AT&T circuits are fully restored. The Commission also should impose such an order as immediate interim relief to protect the public interest, pending any final action following any period of notice and comment that is applied here. Additionally, the Commission should ensure that PLDT US does not use the rate increase to engage in pricing policies that harm U.S. competition or otherwise take unfair advantage of its affiliation with PLDT.

Respectfully submitted,

AT&T CORP.

By /s/ James J. R. Talbot  
Mark C. Rosenblum  
Lawrence J. Lafaro  
James J. R. Talbot

One AT&T Way  
Bedminster, New Jersey 07921  
(908) 532-1847

Dated: February 7, 2003.

## **CERTIFICATE OF SERVICE**

I, Karen Kotula, hereby certify that on this 7<sup>th</sup> day of February, 2003, a copy of the “AT&T Emergency Petition for Settlements Stop Payment Order and Request for Immediate Interim Relief” was hand-delivered to the persons listed below.

Don Abelson  
Chief, International Bureau  
445 12th Street, SW  
Washington, DC 20554

Patricia Cooper  
Chief, Regional and Industry Analysis Branch  
445 12th Street, SW  
Washington, DC 20554

Jackie Ruff  
Assistant Bureau Chief  
445 12th Street, SW  
Washington, DC 20554

Anita Dey  
Regional Specialist, Regional  
and Industry Analysis Branch  
445 12th Street, SW  
Washington, DC 20554

James Ball  
Chief, Policy Division  
445 12th Street, SW  
Washington, DC 20554

Kathryn O'Brien  
Chief, Strategic Analysis and Negotiations Division  
445 12th Street, SW  
Washington, DC 20554

Lisa Choi  
Senior Legal Advisor, Policy Division  
445 12th Street, SW  
Washington, DC 20554

Claudia Fox  
Deputy Chief, Policy Division  
445 12th Street, SW  
Washington, DC 20554

/s/ Karen Kotula  
Karen Kotula